Poominathan a/l Kuppusamy v Besprin Stationers Sdn Bhd

HIGH COURT (SHAH ALAM) — CIVIL APPEAL NO MT 3-16-4 OF 2000
ZALEHA ZAHARI J
11 FEBRUARY 2003

Insurance *— Group policy taken out by company — Beneficiary — Test of 'beneficiary' — Whether company or employee the 'beneficiary' of group accident insurance policy — Company took policy on employee — Employee injured — Employee made claim on policy — Claim paid to company as 'policy holder' — Whether policy was intended to cover losses sustained by company when employee injured — Whether company liable to pay employee insurance monies*

Labour Law *— Employment — Terms and conditions — Absence of written contract — Group accident insurance policy taken for employees — Coverage began only after employee engaged — Whether coverage of such policy a term of employee's engagement — Whether such policy intended to benefit company only and not employee — Employment Act 1955 s 69*

The appellant was employed by the respondent as a van driver in November 1994 although there was no written contract of employment. The respondent took out a personal accident group care insurance policy from insurers ('AIA') in August 1996. The respondent was named 'policy holder' and the policy defined the 'insured person(s)' as 'the members and/or employees of the policy holder over 16 years and under 65 years of age as set forth in Part II of the application and any additional members and/or employees as listed by the policy holder'. It was not disputed that these included the appellant. Under the heading 'Benefits' the policy which provided that 'If while the policy is in force any insured person shall sustain injury and shall thereby suffer any of the results described in the following Schedule of Indemnities, the [insurance] company on receipt and approval of proof shall subject to the provisions, conditions and limitations contained herein or which may be endorsed hereon pay an indemnity according to the said Schedule based on a percentage of the Principal Sum as specified in the Schedule of Indemnities'. On 27 December 1998, the appellant accidentally stepped into a chemical solution and sustained injury to his left foot. As a result of this injury, the appellant's left leg was amputated below the knee. The appellant made a claim to AIA in respect of the injury he sustained. AIA satisfied the claim by paying RM25,000 to the respondent. The respondent had since failed and/or refused to pay the insurance monies which they received from AIA to the appellant. Consequential upon such continued failure, the appellant lodged a claim with the Labour Department. The labour officer held that he had no jurisdiction to act pursuant to s 69 of the Employment Act 1955 on the grounds, inter alia, that from the evidence there was no written contract of employment. The labour officer further noted that by the appellant's own admission, he had not been assured and was not even

aware of the policy. The appellant had been employed from November 1994 whereas the policy had only been taken out in August 1996. The labour officer thus dismissed the appellant's claim. The appellant appealed.

Held, allowing the appeal and ordering the payment of the insurance monies to the appellant within 14 days of the order:

(1) The labour officer erred in holding that the terms of employment were to be construed to that prevailing at the time of the appellant's employment in 1994. When the respondent took out the group insurance policy in favour of the named employees in 1996, the benefit of such a policy was an additional benefit of employment constituting a 'term' of employment to which the named employees were entitled. Any subsequent dispute relating to the payment of such benefit would accordingly fall within the ambit of s 69 of the Act and that the labour officer accordingly had jurisdiction to entertain the appellant's claim (see p 256B–C).

(2) The question as to who was entitled to the benefits under the policy depended on the terms of the policy. The fact that the respondent was named as the policy holder, expressly referred to as 'beneficiary' and the person who had paid the premium for the insurance policy was not conclusive. Such a practice may well have been a matter of expediency so as to avoid the hassle of a multitude of claims (see p 256D–E); *Bank Bumiputra Malaysia Bhd v Mohamed bin Salleh* [2000] 2 MLJ 412 followed.

(3) On a careful perusal of the policy, it was clearly intended to cover the harm and injuries suffered by the respondent's employees. The policy was clearly not intended to benefit the respondent employer for costs incurred for loss of manpower for the period that the employees were unfit to perform their duties due to an accident and in the respondent having to hire other workers to perform the duty of the employees. The absence of an express clause to such effect was significant (see p 256E–F).

(4) Naming the appellant as an 'insured person' under the said policy must be construed to mean that the appellant was the beneficiary of the policy. Accordingly the insurance monies belonged to the appellant and the respondent was under a duty to pay such monies over to the appellant (see p 256F–H).

[Bahasa Malaysia summary

Perayu telah dilantik oleh responden sebagai pemandu van pada November 1994 walaupun tidak wujudnya sebarang kontrak perkhidmatan bertulis. Responden telah mengambil suatu polisi insuran penjagaan kumpulan kemalangan peribadi daripada syarikat insurans ('AIA') pada bulan Ogos 1996. Responden dinamakan 'policy holder' dan polisi tersebut telah mentafsirkan 'insured

A person(s)' sebagai 'the members and/or employees of the Policy holder over 16 years and under 65 years of age as set forth in Part II of the Application and any additional members and/or employees as listed by the Policy holder'. Adalah tidak dipertikaikan bahawa ini termasuk perayu. Di bawah tajuk 'Benefits' polisi ini memperuntukkan bahawa 'If while the policy is in force any insured B person shall sustain injury and shall thereby suffer any of the results described in the following Schedule of Indemnities, the company on receipt and approval of proof shall subject to the provisions, conditions and limitations contained herein or which may be endorsed hereon pay an indemnity according to the said Schedule based on a C percentage of the Principal Sum as specified in the Schedule of Indemnities'. Pada 27 December 1998 perayu terpijak ke dalam larutan kimia dan telah mengalami kecederaan pada kaki kirinya. Akibat kecederaan ini, kaki kiri perayu dipotong di bawah lutut. Perayu telah membuat tuntutan kepada AIA berkaitan kecederaan yang dialaminya. AIA telah menyelesaikan tuntutan tersebut dengan D membayar RM25,000 kepada responden. Responden sehinggi kini gagal dan/atau enggan membayar wang insuran yang mereka terima daripada AIA kepada perayu. Akibat kegagalan berterusan tersebut, perayu telah membuat tuntutan dengan Jabatan Buruh. Pegawai buruh telah memutuskan bahawa beliau tidak mempunyai bidangkuasa bertindak menurut s 69 Akta Pekerjaan 1955 di atas E alasan, antara lain, bahawa daripada keterangan tiada sebarang kontrak pekerjaan bertulis. Pegawai buruh juga mengambil kira pengakuan perayu sendiri bahawa beliau tidak pernah diinsurankan, malah tidak sedar akan polisi tersebut. Perayu telah diambil bekerja sejak bulan November 1994 malah polisi tersebut hanya diambil pada Ogos 1996. Maka pegawai buruh telah menolak tuntutan perayu. F Perayu telah merayu.

Diputuskan, membenarkan rayuan dan mengarahkan supaya wang insuran dibayar kepada perayu dalam masa 14 hari daripada tarikh perintah:

G (1) Pegawai buruh telah terkhilaf dalam memutuskan bahawa terma-terma pekerjaan adalah sepertimana pada masa perayu diambil kerja pada 1994. Apabila responden mengambil polisi insuran kumpulan ke atas pekerja yang dinamakan pada 1996, faedah polisi seperti itu adalah satu faedah tambahan pekerjaan yang H menjadi suatu 'terma' pekerjaan yang pekerja yang dinamakan itu berhak menuntut. Sebarang pertikaian seterusnya berkaitan pembayaran faedah seperti itu tersabit di bawah s 69 Akta tersebut dan pegawai buruh mempunyai bidang kuasa mendengar tuntutan perayu (lihat ms 256B–C).

I (2) Persoalan mengenai siapa berhak menuntut faedah di bawah polisi bergantung kepada terma-terma polisi. Fakta bahawa responden dinamakan pemegang polisi, dirujuk sebagai 'beneficiary' dan merupakan pihak yang membuat bayaran bagi

polisi insuran adalah tidak kukuh. Perbuatan sebegini mungkin merupakan kepentingan semata-mata untuk mengelakkan daripada masalah tuntutan berganda (lihat ms 256D–E); *Bank Bumiputra Malaysia Bhd v Mohamed bin Salleh* [2000] 2 MLJ 412 diikut.

(3) Di atas penelitian polisi tersebut, polisi tersebut berniat dengan jelasnya merangkumi kecederaan yang dialami pekerja-pekerja responden. Polisi dengan jelasnya tidak berniat membawa faedah kepada responden sebagai majikan bagi kos yang dialami bagi kehilangan tenaga manusia pada masa pekerja tidak berupaya melakukan tanggungjawab mereka akibat suatu kemalangan dan di dalam keperluan responden mengambil pekerja lain melakukan tanggungjawab pekerja tersebut. Ketiadaan klausa nyata mengatakan sedemikian adalah penting (lihat ms 256E–F).

(4) Menamakan perayu sebagai 'insured person' di bawah polisi tersebut perlu ditafsirkan bahawa perayu adalah benefisiari polisi tersebut. Oleh itu, wang insuran tersebut adalah milik perayu dan responden berkewajipan membayar wang tersebut kepada perayu (lihat ms 256F–H).]

Notes

For cases on insurance group policies taken out by a company, see 8 *Mallal's Digest* (4th Ed, 2001 Reissue), para 127.

For cases on terms and conditions of an insurance policy, see 8 *Mallal's Digest* (4th Ed, 2001 Reissue), paras 1120–1123.

Cases referred to

Bank Bumiputra Malaysia Bhd v Mohamed bin Salleh [2000] 2 MLJ 412 (folld)

Legislation referred to

Employment Act 1955 s 69(1)(a)

Appeal from: Kes Saman Pengarah Buruh No 270/1999

S Selverajan (*Azariah & Assoc*) for the appellant/complainant.
N Devan (*Devan & Assoc*) for the respondent/defendant.

Zaleha Zahari J: This is an appeal against the decision of Ketua Pengarah Buruh dated 19 July 1999 dismissing Poominathan a/l Kuppusamy's ('the appellant') claim against Besprin Stationers Sdn Bhd ('the respondent') for a sum of RM25,000 which the appellant lodged pursuant to s 69 of the Employment Act 1955 ('the Act').

The background facts of this appeal are not in issue.

The sum of RM25,000 in issue is the sum received by the respondent from American International Assurance Company Bhd ('AIA') pursuant to

a PA Group Care Policy taken by the respondent in favour of certain named employees ('the insurance policy') of which the appellant is one of the named persons.

The appellant commenced employment with the respondent as a van driver on 15 November 1994. It is common ground that there is no written contract as to the terms and conditions of employment of the appellant by the respondent. The respondent took from AIA on 1 August 1996 the insurance policy shown at pp 34–45 of the appeal record. The clauses material to the issues raised in this case are:

(a) cl 2 which defines 'insured person' as:

> the members and/or employees of the Policy holder over 16 years and under 65 years of age as set forth in Part II of the Application and any additional members and/or employees as listed by the Policy holder in the Additions and Deletions Specification form filed with the Company;

(b) Part II of the application form (pp 40–41 of the appeal record) which lists out the members/employees covered by the said policy. The appellant's name and particulars is listed as item 16;

(c) Part III of the policy (p 34 of the appeal record) under the heading 'BENEFITS' which provides that:

> If while the policy is in force any insured person shall sustain injury and shall thereby suffer any of the results described in the following Schedule of Indemnities, the company on receipt and approval of proof shall subject to the provisions, conditions and limitations contained herein or which may be endorsed hereon pay an indemnity according to the said schedule based on a percentage of the Principal Sum as specified in the Schedule of Indemnities.

It is not in issue that on 27 December 1998 the appellant had accidentally stepped into a chemical solution and sustained injury to his left foot as a result of which injury the appellant's left leg below the knee was amputated.

On the facts of the case the appellant, not the respondent, made a claim to AIA for a sum of RM25,000 pursuant to the insurance policy. In respect of the injury sustained by the appellant, AIA satisfied the claim lodged by paying RM25,000 to the respondent, not to the appellant. The respondent has since failed/refused to pay the RM25,000 insurance monies which they received from AIA to the appellant. Consequential upon the continued failure of the respondent to pay the RM25,000, the appellant lodged the claim at p 7 of appeal record with Jabatan Buruh Pelabuhan Klang on 21 May 1999 pursuant to s 69 of the Act.

For convenience of reference the appellant's claim is reproduced below. It reads as follows:

> Saya bekerja sebagai van driver. Defendan telah menginsurans diri saya dalam group accident scheme. Defendan telah memberitahu bahawa semua pekerja di field seperti production dan driver diberi faedah ini. Selepas saya dapat kemalangan, defendan telah menyerahkan semua dokumen kepada saya dan urusan sendiri claim tersebut. Dalam pada masa ini defendan telah membuang saya kerana kaki saya memakai kaki palsu. Saya telah failkan kes di Jabatan Perhubungan Perusahaan. Oleh itu defendan tidak mahu memberi

faedah itu walaupun syarikat insuran telah bayar. Saya beranggap bahawa ianya salah satu faedah kepada saya. A

The labour officer dismissed the appellant's claim on 19 July 1999 on the following ground:

Daripada keterangan yang diberi oleh pengadu dan defendan adalah didapati bahawa tiada kontrak perkhidmatan bertulis. Oleh itu tiada syarat bertulis tentang insuran ini. Persoalan seterusnya adakah ianya satu ('implied condition') dalam syarat perkhidmatan pengadu ini. B

Pengadu masuk kerja pada 1 November 1994 dan polisi ini diambil pada 1 Ogos 1996. Pengadu sendiri dalam keterangannya semasa di soal balas menyatakan bahawa beliau tidak tahu tentang polisi ini. Daripada keterangan juga didapati bahawa pengadu tidak pernah dijanjikan tentang faedah daripada insuran. C

The labour officer then concluded that he had no jurisdiction under s 69(1) of the Act to entertain the appellant's claim. Section 69(1) reads as follows:

(1) The Director General may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee under — D

(a) any term of the contract of service between such employee and his employer;
(b) any of the provisions of this Act or any subsidiary legislation made thereunder, or E
(c) the provisions of the Wages Councils Act 1947 or any order made thereunder,

The appellant counsel's submission

Mr Selvarajan submitted that the fact that the respondent's name appeared as 'beneficiary' in the policy does not automatically mean that the respondent was entitled to the monies paid by AIA. He submitted that this practice was but a matter of expediency so as to avoid the hassle of a multitude of claims. The Court of Appeal's decision in *Bank Bumiputra Malaysia Bhd v Mohamed bin Salleh* [2000] 2 MLJ 412 was cited as authority for this proposition. In that case, Gopal Sri Ram JCA held as follows (at p 414): F G

... group accident insurance policy. What it amounts to is this. The insured under the policy is the appellant. It alone is entitled to receive the benefits under the policy. But the policy does not cover any harm suffered by the appellant. It covers harm and injury suffered by the appellant's employees.

In the absence of an agreement to the contrary, under the ordinary principles that govern the law of trusts, any employee would be able to lodge a claim, as a beneficiary of the policy, against MNI. This would cause great difficulties to the insurer because it will then be faced with a multitude of claims. To avoid such a result, there is inserted in the relevant policy the following clause: H

9 The insurers shall be entitled to treat the insured as the absolute owner of the policy and shall not be bound to recognize any equitable or other claim to or interest in the policy. I

A The effect of this clause is that the person such as the respondent cannot recover anything under the policy from MNI directly. However the appellant is entitled to receive any benefit due to the respondent. Once received, it will hold the monies as trustee for the respondent. This then is what a group insurance policy is all about.

B Counsel for the appellant submitted that an implied trust exists in respect of the insurance monies in issue of which the respondent is a 'trustee' and the appellant is the real 'beneficiary'. Accordingly he was of the view that the respondent held the RM25,000 monies received from AIA on trust for the appellant. The respondent's failure to pay the insurance monies from AIA to the appellant must necessarily be construed by this court as a breach C of fiduciary duty and a form of unjust enrichment at the expense of the injury which the appellant sustained.

He also highlighted the absence of an express clause in the policy stipulating that it was taken for the benefit of the respondent to compensate any cost incurred by the respondent for loss of manpower for the period that D the employees were unfit to perform their duties due to an accident by having to hire other workers to perform the duty of the injured employee. In this situation he argued that it was accordingly not open for this court to interpret the policy to mean that it was taken for the benefit of the respondent's cum employer and not for the benefit of the respondent's named employees.

E

The respondent counsel's submission

Mr N Devan, the respondent counsel, in his reply submitted that a contract came into existence when the employee signed the letter of offer and commenced his employment. He was of the view that by reason of the fact F that the respondent took out the policy long after the appellant had served the respondent, and the fact that the respondent had never stated that the coverage by an insurance policy was to be a benefit of employment, the question of the insurance policy in issue being a term of the contract of employment between the appellant and the respondent does not accordingly arise.

G

He was of the view by reason of the fact that the respondent was expressly named as 'beneficiary' must be construed by this court to mean the respondent, not the appellant, was to have the benefit of monies paid under the insurance policy.

H He also submitted that the labour officer was right in holding that the appellant's claim does not fall within the ambit of s 69(1)(a) of the Act and in concluding that he had no jurisdiction to entertain the appellant's claim. According to him the labour officer's power is clearly confined to the matters prescribed under s 69(1) of the Act. The issue of trusteeship raised by the appellant was outside the ambit of this provision and would I accordingly have to be the subject matter of a separate action in court.

In these circumstances he accordingly prayed that the appeal against the labour officer's decision be dismissed with costs.

Findings

The first issue for determination is whether the labour officer was right in holding that he had no jurisdiction under s 69 of the Act to entertain the appellant's complaint and in further holding that the appellant had failed to prove that the insurance policy in issue constitutes a term of the contract of employment.

On this issue I hold that the labour officer erred in holding that the terms of employment was to be construed to that prevailing at the time of the appellant's employment in 1994. In my view when the respondent took out the group insurance policy in favour of the named employees in 1996, this must be accordingly be interpreted to mean that the benefit of such a policy was an additional benefit of employment constituting a 'term' of employment to which the named employee was entitled to. Any subsequent dispute relating to the payment of such benefit would accordingly, in my view, fall within the ambit of s 69 of the Act and that the labour officer accordingly had jurisdiction to entertain the appellant's claim.

As to who is entitled to be paid/receive the benefits under the policy, this would of course depend on the terms of the policy. On this issue I am in agreement with the appellant counsel's submission that the fact that the respondent was named as the policy holder, expressly referred to as 'beneficiary' and the person who paid the premium for the insurance policy is not conclusive. Such a practice may well be a matter of expediency so as to avoid the hassle of a multitude of claims as held by the Court of Appeal decision in *Bank Bumiputra Malaysia Bhd.*

Upon a careful perusal of the terms of the policy I am of the view that it clearly is intended to cover harm and injuries suffered of the named respondent's employees. The terms of the policy clearly is not intended to benefit the respondent cum employer for any cost incurred by the respondent for loss of manpower for the period that the named employees were unfit to perform their duties due to an accident and in having to hire other workers to perform the duty of the employees. The absence of such an express clause to that effect is in my view significant.

In the situation before me, by naming the appellant as an 'insured person' under the said policy, I am of the considered opinion that this must be construed to mean that the appellant is the beneficiary of the policy in issue.

I accordingly hold the insurance monies of RM25,000 belongs to the appellant and that the respondent was accordingly under a duty to pay to the appellant the sum of RM25,000.

I therefore accordingly allowed the appeal with costs and ordered the respondent to pay the sum of RM25,000 within 14 days of the making of this order.

Appeal allowed and payment of the insurance monies to the appellant within 14 days of the order ordered.

Reported by Sivapragasam Kumaran